

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**



Legal Counsel Division

April 14, 2005

Robert Pittman  
P.O. Box 1767  
Washington, D.C. 20013-1767

Re: Use of ANC Funds to Hire Legal Counsel

Dear Mr. Pittman:

This responds to your letter of March 2, 2005 in which you ask us to provide advice concerning the legality of an expenditure by ANC6A to hire an attorney to appear before the Alcohol Beverage Control Board (ABC Board).

Unfortunately, we are unable to provide you with the interpretation you request. This Office is charged with, among other duties, assisting Advisory Neighborhood Commissions (ANCs) by providing “legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations . . . may be requested directly by any *Commission*.” (Emphasis added.) D.C. Official Code § 1-309.12(d)(3) (2004 Supp.). Your request, as a member of the public, comes neither through a Commission nor even through a Commissioner. As a result, we are constrained from rendering to you what would constitute legal advice to the general public.

Even treating your letter as information of alleged wrongdoing by an ANC, we can find no basis to take any action or even to refer the matter to the D.C. Auditor for investigation. As you point out in your letter, ANCs are not prevented from expending funds for legal expenses for “Commission representation before an agency, board or commission of the District government . . .” D.C. Official Code § 1-309.13(l)(2) (2004 Supp.). Notwithstanding, you state your belief that ANC 6A improperly hired an attorney for representation before the ABC Board despite there being no formal protest by the ANC then pending, and not otherwise being a party before the Board. We are not willing to read the law so narrowly.

You provide with your letter the minutes of the ANC meeting at which the expenditure was authorized. The minutes show that the decision to extend the attorney’s representation was discussed; a motion was made, put to a vote, and passed without

objection. *See Minutes from October 14, 2004, ANC 6A* (attached hereto). As a result, we see no procedural deficiency in the ANC's decision-making process.

As for whether the subject-matter of the representation was appropriate, we again see no violation of ANC law. According to the retainer letter you attach, ANC 6A's outside counsel was "to negotiate individual agreements with the establishments on H Street to include revisions to the existing ANC 6A Cooperative Agreement for Class A and Class B liquor Licenses." *See Letter from Joseph Fengler to Douglas E. Fierberg, Esquire, October 15, 2004* (attached hereto). This activity is entirely consistent with the limitations concerning outside counsel. It is common practice for ANCs to enter into cooperative agreements with liquor-vending establishments as an alternative to filing a protest with the Board. In fact, such preliminary activity is not only part of the overall representation before the ABC Board, but both incidental and necessary to such representation. Ultimately, the Board would be involved directly either when the cooperative agreements come before it for approval (as they must) or, if no cooperative agreement is reached, when an ANC protest is filed. To interpret the law so narrowly that representation would only include *physical* appearance before an agency or board, as you seem to suggest, would be unreasonable and would result in interference with and micromanagement of the attorney-client relationship – a standard we are unwilling to impose, at least under these facts.

Accordingly, there is no basis to find any wrongdoing by ANC 6A on the facts you have presented to us.

Sincerely,

ROBERT J. SPAGNOLETTI  
Attorney General

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/S/

RJS/dps

Attachments: Minutes from October 14, 2004, ANC 6A  
Letter from Joseph Fengler to Douglas E. Fierberg, Esquire, October 15,  
2004

(AL-O5-156)